

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**BARRY RENFOLD COOLEY,**

**Defendant.**

**CASE NO. 8:02CR353**

## ORDER

This matter is before the Court on: the Defendant's motion to alter or amend the memorandum and order and judgment denying his § 2255 motion (Filing No. 632). The motion was brought pursuant to Federal Rule of Civil Procedure 59(e).

In the Court's previously issued Memorandum and Order (Filing No. 630), the Court denied the Defendant's motion to amend his § 2255 motion (Filing No. 626), concluding that the matters raised in the proposed amended § 2255 motion were substantially similar to those presented in the original motion.

As of this date, Cooley has filed: a § 2255 motion (Filing No. 606) that was denied (Filing No. 630); a motion to amend his § 2255 motion (Filing No. 611) that was denied (Filing No. 615); a motion for leave to amend (Filing No. 617) that was denied and an amended motion (Filing No. 618) that was stricken (Filing No. 621); a motion to alter or amend judgment under Rule 59(e) (Filing No. 626); and the instant motion to alter or amend judgment under Rule 59(e) (Filing No. 632).

The Court has rendered its decision regarding the Defendant's § 2255 motion. (Filing Nos. 630, 631.) Rule 9 of the Rules Governing Section 2255 Proceedings provides: "Before presenting a second or successive motion, the moving party must obtain an order from the appropriate court of appeals authorizing the district court to consider the motion,

as required by 28 U.S.C. § 2255, para. 8.” The Eighth Circuit Court of Appals has considered multiple motions for new trial in the § 2255 context as successive motions. *United States v. Lambros*, 404 F.3d 1034, 1037 (8<sup>th</sup> Cir. 2005). Therefore, the Defendant’s motion is considered a successive § 2255 motion and denied for lack of an order from the Eighth Circuit allowing this Court to consider the motion.

IT IS ORDERED that the Defendant’s motion to alter or amend his § 2255 motion pursuant to Rule 59(e) (Filing No. 632) is denied.

DATED this 28<sup>th</sup> day of February, 2008.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge